

November 25, 2019

Honorable Gregory H. Woods
United States District Court Southern District of New York
500 Pearl Street
New York, NY 10007-1312

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MEMORANDUM ENDORSED

Re: *State Street Global Advisors Trust Company v. Visbal*, Case No. 1:19-cv-1719-GHW

Dear Judge Woods:

The parties had a productive meet and confer. The result is that Plaintiff agreed to narrow the scope of certain Interrogatories and Defendant has indicated she will answer Interrogatories Nos. 2–7, 24, and 25, making a good-faith effort to provide her responses on or before December 6, 2019. Thus, the sole remaining interrogatory issue is Interrogatory No. 1, which calls for certain specific details of each sale.

Defendant contends that because she does not have a working spreadsheet (or other summary document) collecting and organizing this information, the requested information must be culled from the documents produced, which would be an incredibly burdensome undertaking. As such, Defendant contends that such information is just as accessible to Plaintiff, who may collect and organize this information, as it is for Defendant. Plaintiff disagrees simply because the information requested is uniquely Ms. Visbal's and she knows her own (somewhat disorganized) documents better than Plaintiff, the universe of which appears to be comprised chiefly of emails/correspondence and outdated buyer lists.

Finally, with respect to Visbal's subpoena for testimony from Ms. McCallion, a member of the trial team at Fish & Richardson, the parties' respective positions are as follows.

Defendant. The Defendant maintains that Plaintiff has failed to make a "timely motion" as required under Fed. R. Civ. P. 45 because the deposition was noticed for November 25. Defendant notes that although Plaintiff accepted service of the subpoena and the accompanying deposition notice and notice of subpoena on November 7, 2019, Plaintiff did not raise any alleged defects until late in the evening on Sunday, November 24th, after counsel for Defendant had already travelled to New York to take Ms. McCallion's deposition.

Plaintiff. Plaintiff contends that the subpoena itself was defective under Rule 45 because, *inter alia*, Visbal failed to specify the date or the time of the deposition in the subpoena (the "Date and Time" field was left blank). With respect to Defendant's recent travel, Plaintiff contends that it was ill advised at least because (1) Plaintiff told Defendant it would be moving to quash the subpoena during the November 7 conference with the Court and (2) Defendant improperly ignored Plaintiff's subsequent November 14 request to meet and confer on the subpoena when service was accepted on that day (and not before, as Visbal states above).

As such, in the event that the Court elects to treat the subpoena as valid and timely served, the Plaintiff proposes the following briefing schedule (subject to the Court's approval, recognizing

that this briefing occurs after the close of fact discovery) concerning Plaintiff's motion to quash the deposition of Ms. McCallion:

- Opening Brief: December 6, 2019
- Opposition Brief: December 13, 2019
- Reply Brief: December 18, 2019

Visbal does not object to this proposed schedule.

* * *

The parties thank the Court for its attention to this matter and note that they are available for a further teleconference with the Court either (1) any time tomorrow except from 12 pm–4:30 pm (when counsel for Plaintiff is in court on another matter in Delaware, and counsel for Defendant has other previous obligations) or (2) Wednesday from 2 pm–5 pm.

Respectfully submitted,

/s/ John S. Goetz

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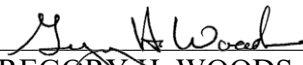
Attorney for Defendant

The Court will hold a telephone conference to address both of the issues raised in this letter on December 6, 2019 at 4:30 p.m. That conference will also serve as a pre-motion conference on Defendant's motion to hold Kristen McCallion in contempt of court, as requested by Defendant at Dkt No. 169.

The Clerk of Court is directed to terminate the motion pending at Dkt No. 169.

SO ORDERED.

Dated: December 3, 2019
New York, New York



GREGORY H. WOODS
United States District Judge